

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2014 AUG 26 PM 12:51

CLERK OF COURT

ANDREW GONZALEZ

Plaintiff.

v.

SANTANDER CONSUMER
USA, INC.

Defendant.

CIVIL ACTION NO.

4-14CV-700-0

TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Andrew Gonzalez complains of Santander Consumer USA, Inc. Defendant, and for cause of action would respectfully show as follows:

NATURE OF ACTION

1. This is an action for damages brought by individual, Plaintiff Andrew Gonzalez against Defendant Santander Consumer USA, Inc. for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).
2. Plaintiff contends that the Defendant has violated such laws by calling Plaintiffs cellular telephone with recorded messages using an automatic telephone dialing system and used a telephone system which utilizes interactive voice recognition technology, also known as a predictive dialer

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 47 U.S.C. §227(f)(2).
4. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1391b because Defendant engages in business within this state, to wit debt collection.
5. Venue is proper pursuant to 28 U.S.C. §1391b and 47 U.S.C. §227(f)(4) .
6. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.
7. All conditions precedent to the bringing of this action, have been performed.

PARTIES

8. The Plaintiff in this lawsuit is Andrew Gonzalez, a natural person and a citizen of Tarrant County, Texas.
9. Defendant in this lawsuit is Santander Consumer USA, Inc. (herein after “Santander”) with principal office at 8585 N. Stemmons Freeway, STE 1100, Dallas, TX 75247-3836.
10. Santander may be served with process by serving its registered agent for service of process: CT Corporation System, 1999 Bryan St., STE 900, Dallas, TX 75201.

FACTUAL ALLEGATIONS

11. On **June 30, 2014 at 10:07 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit A)**
12. On **July 01, 2014 at 11:00 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit B)**
13. On **July 06, 2014 at 10:09 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit C)**
14. On **July 07, 2014 at 12:44 p.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit D)**
15. On **July 08, 2014 at 10:40 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit E)**
16. On **July 09, 2014 at 10:09 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit F)**
17. On **July 10, 2014 at 11:49 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit G)**
18. On **July 11, 2014 at 10:24 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit H)**
19. On **July 14, 2014 at 10:20 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit J)**
20. On **July 15, 2014 at 10:14 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit K)**
21. On **July 16, 2014 at 11:38 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit L)**

22. On **July 17, 2014 at 10:49 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit M)**
23. On **July 18, 2014 at 10:45 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit N)**
24. On **July 19, 2014 at 10:09 a.m.**, Defendant Santander called the Plaintiff's wireless cell phone (951) 756-0681 from telephone number (888) 222-4227. **(Exhibit P)**
25. **Refer to ¶24**, Plaintiff informed the representative for Defendant Santander to stop calling the cellular phone.
26. In the telephone communications in question here, Defendant Santander used an automatic telephone dialing system to dial Plaintiff's wireless cellular phone.
27. **In the alternative**, in the telephone communications in question here, Defendant Santander used a telephone dialing system with the **capacity** to automatically dial Plaintiff's wireless cellular phone. **(Emphasis Added)**
28. Upon information and belief, in the telephone communications in question here, Defendant Santander used a telephone system which utilizes interactive voice recognition technology, also known as a predictive dialer, in a which machine places calls, and when a consumer answers the phone there is a noticeable pause prior to being connected to a live representative.
29. **Refer to ¶28**, this technology, upon information and belief, dials several numbers simultaneously and connects the call only to those who answer first.
30. At no time has the Plaintiff given his express consent, written or otherwise, to Defendant Santander to call his wireless cellular telephone.
31. Plaintiff has no prior or present established relationship with Defendant Santander.

32. Plaintiff has no contractual obligation to pay Defendant Santander any alleged debt.
33. On July 18, 2014 Plaintiff sent a letter via United States Postal Service Certified Mail informing Defendant Santander said actions were a violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii). This was in an effort to amicably resolve the matter prior to litigation.
34. All violations complained of herein occurred within the statute of limitations of the applicable federal statutes.

COUNT I

VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. §227(b)(1)(A) BY DEFENDANT SANTANDER CONSUMER USA, INC.

35. Paragraphs 1 through 34 are re-alleged as though fully set forth herein.
36. Plaintiff and Defendant Santander do not have an established business relationship within the meaning of 47 U.S.C. §227(a)(2).
37. Defendant Santander called Plaintiff's cellular telephone using an "automatic telephone dialing system" within the meaning of 47 U.S.C. §227(a)(1).
38. In each telephone communication referenced in ¶11 through ¶24 Defendant Santander has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227 (b)(1)(A) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the **capacity** to automatically call the Plaintiff's cellular telephone number (951) 756-0681, which is assigned to a cellular telephone service **with no** prior express consent and for no emergency purpose.
39. 47 U.S.C. §227(b)(1)(A) which states in part;
- (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be **unlawful for any person** within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding such other and further relief as the Court may deem just and proper.

COUNT II

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C.
§227(b)(1)(A)(iii) BY DEFENDANT SANTANDER CONSUMER USA, INC.**

40. Plaintiff alleges and incorporates the information in paragraphs 1 through 39.
41. In each telephone communication referenced in ¶11 through ¶24 Defendant Santander has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the **capacity** to automatically call the Plaintiff's cellular phone number (951) 756-0681, which is **assigned to a cellular telephone service**.
42. In telephone communications referenced in ¶17, ¶20, ¶21, ¶22, ¶23, ¶24 Defendant Santander has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the **capacity** to automatically call the Plaintiff's cellular phone number (951) 756-0681, which the **Plaintiff was charged for the telephone calls**.
43. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, **or any service for which the called party is charged for the call;**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- e) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- f) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- g) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- h) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

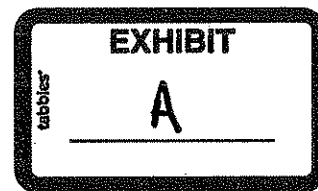
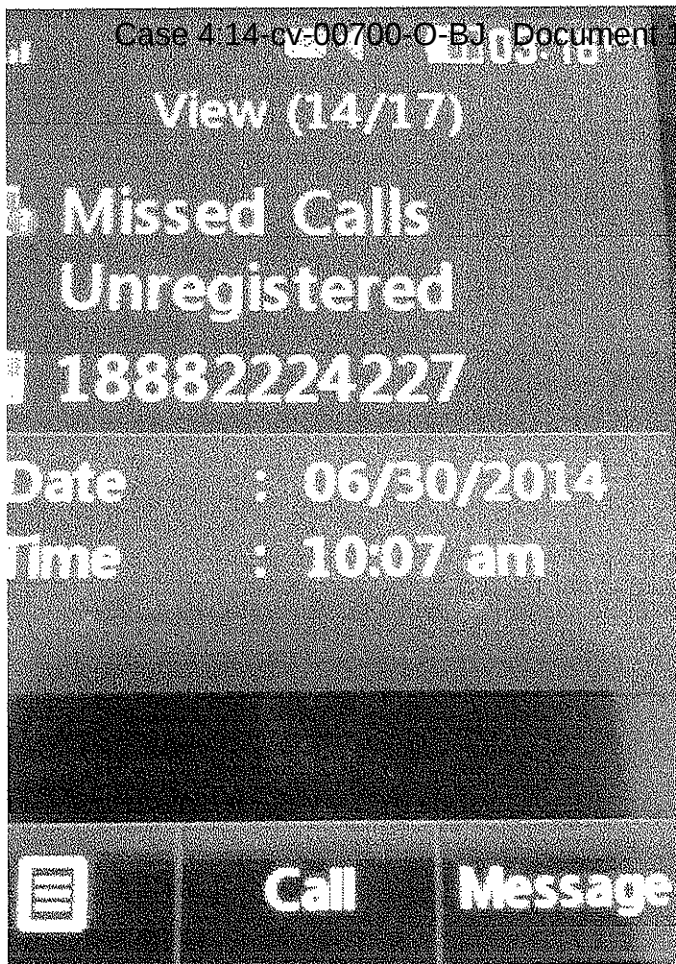
Plaintiff is entitled to and hereby demands trial by jury.

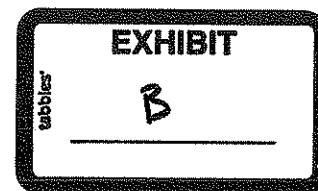
Dated: August 25, 2014

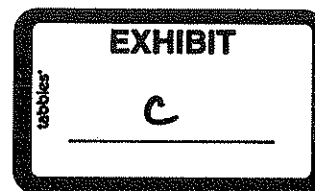
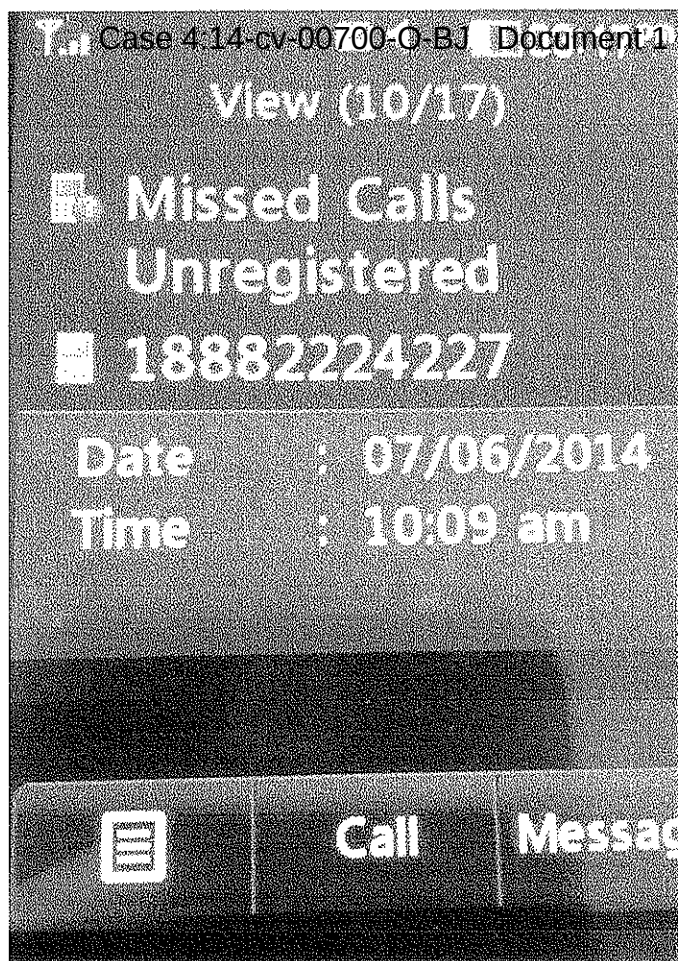
Respectfully Submitted,

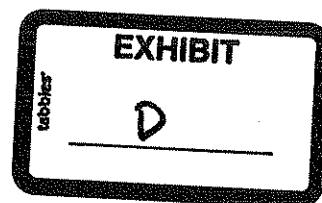
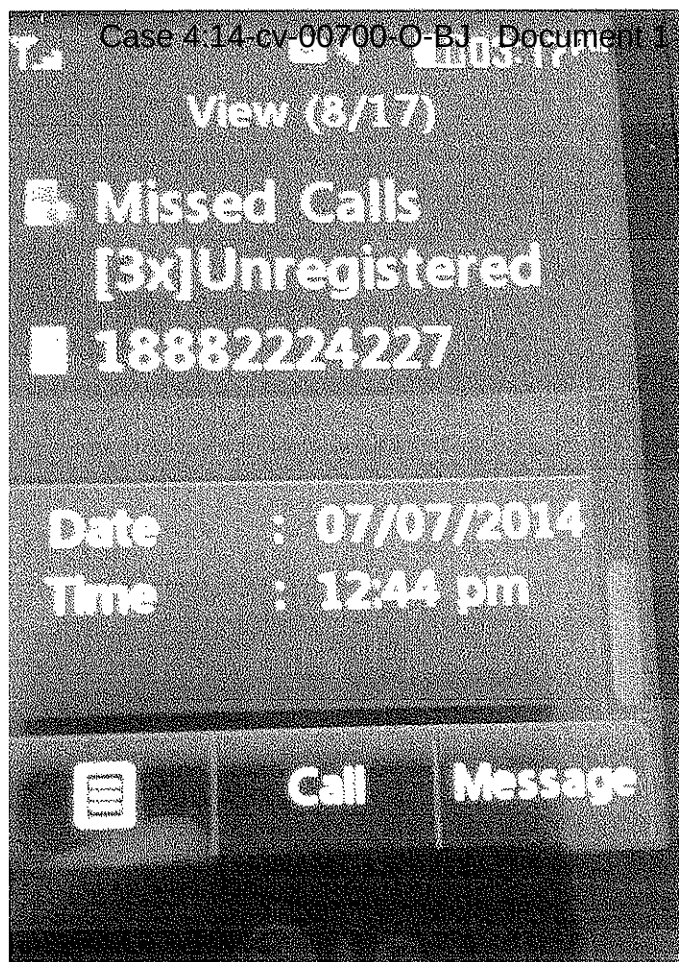


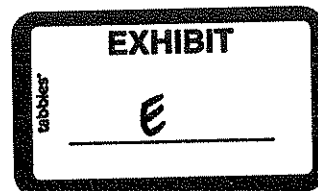
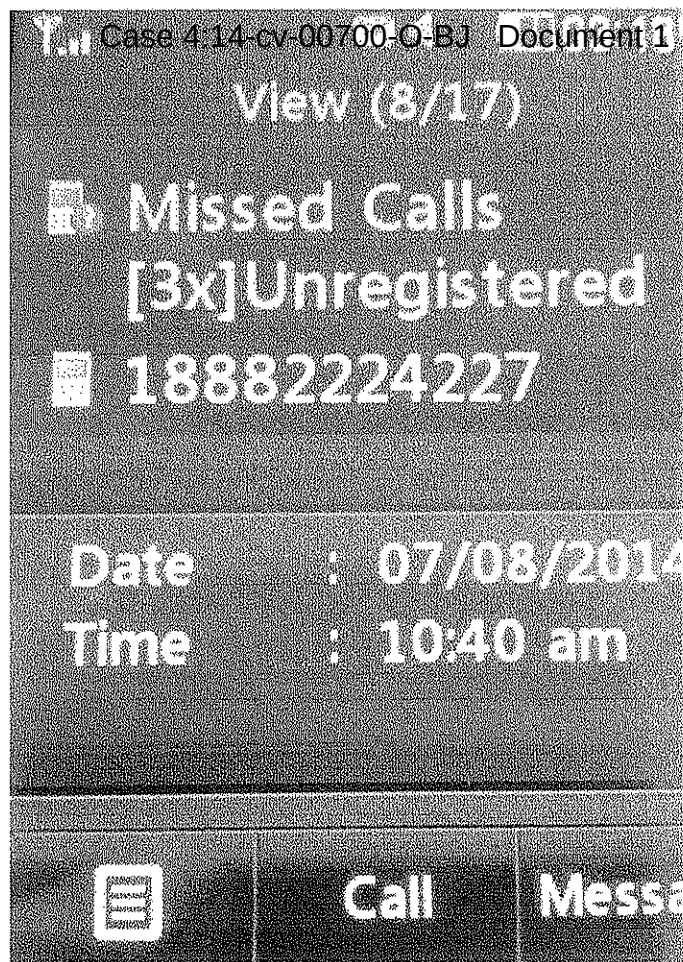
Andrew Gonzalez
416 Chatamridge Court
Fort Worth, TX 76052
(817) 975-5655
gonandrew@yahoo.com

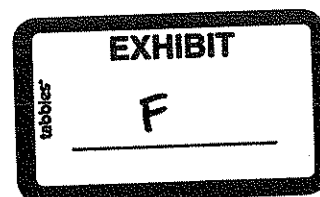


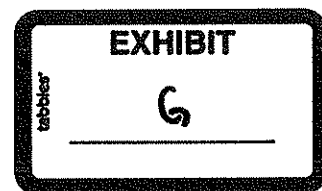
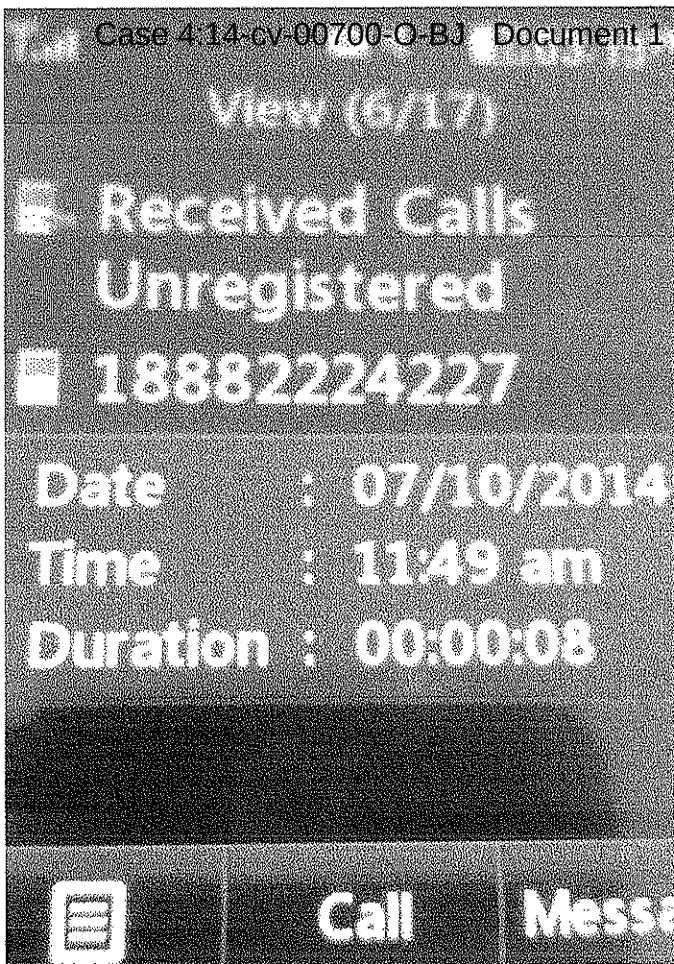


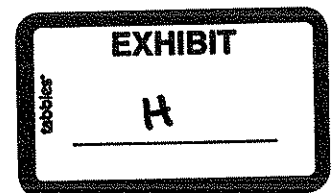


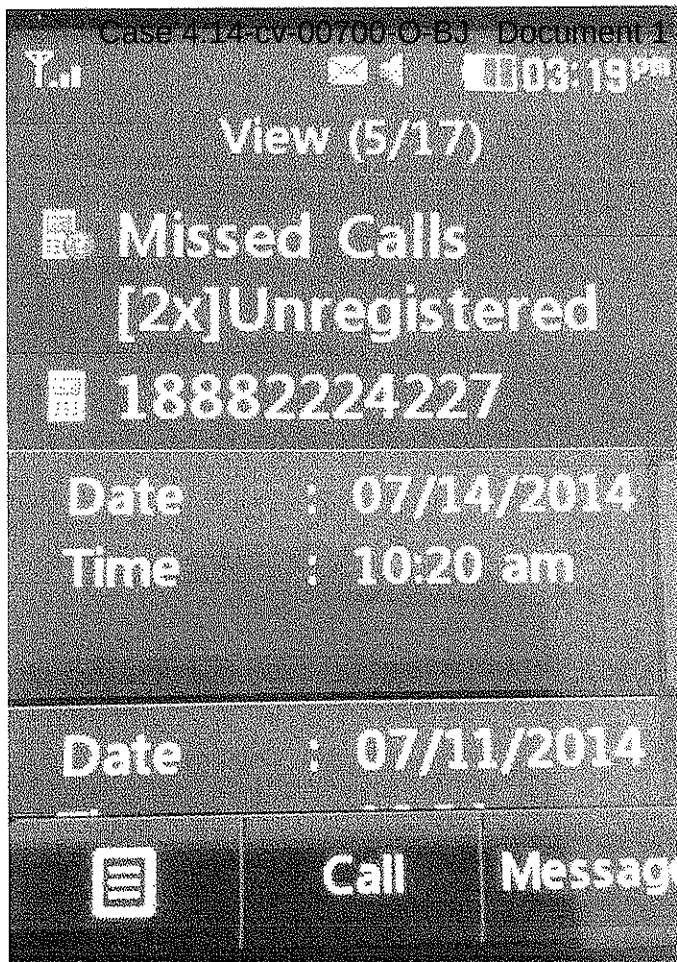


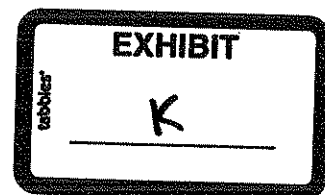
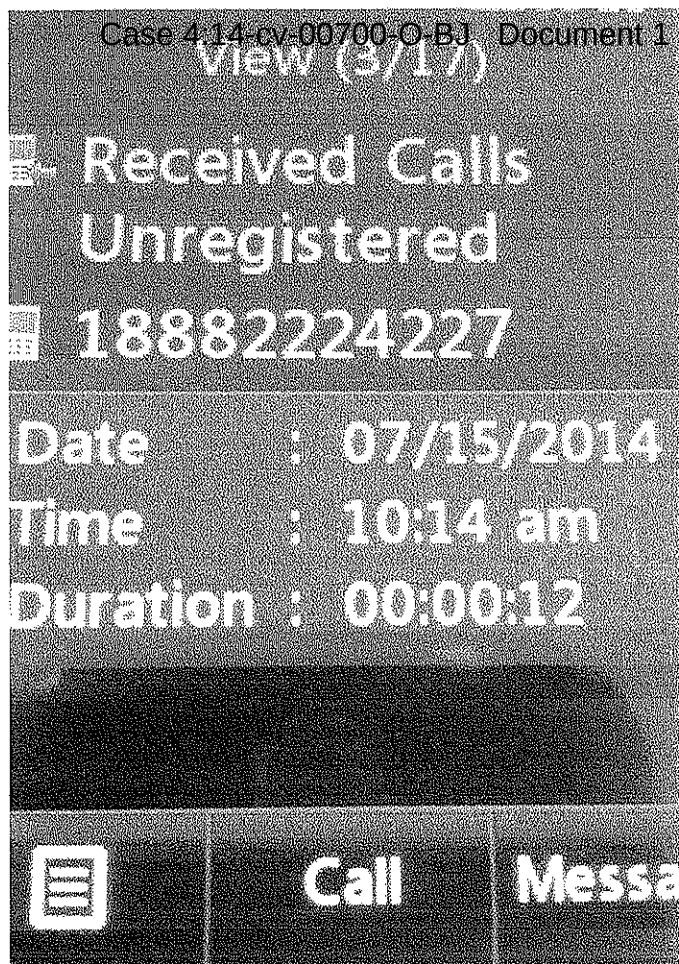


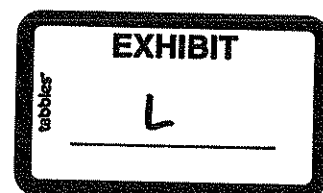
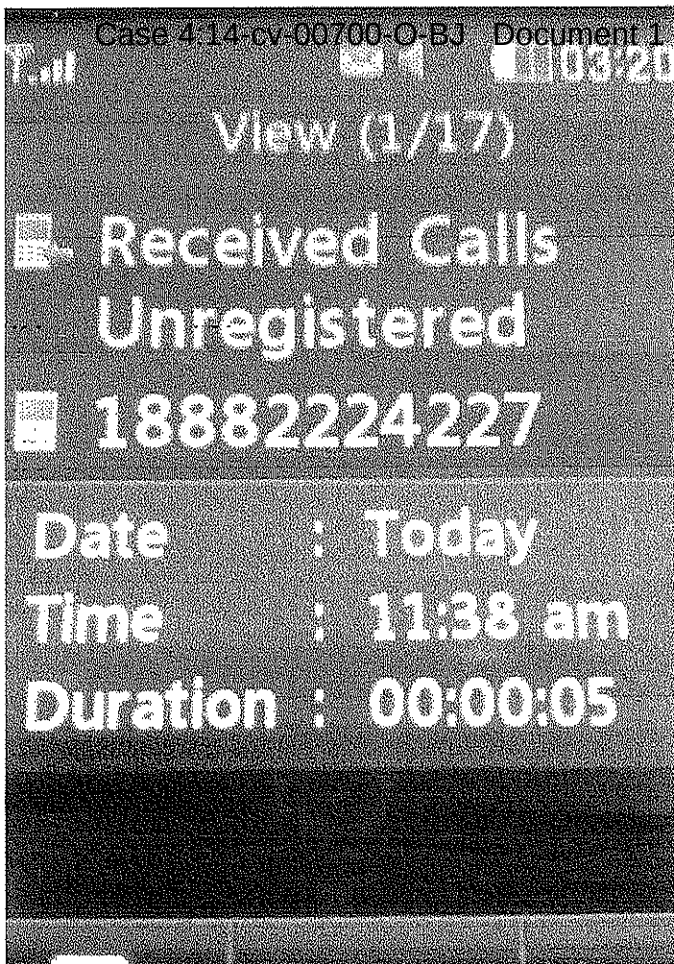


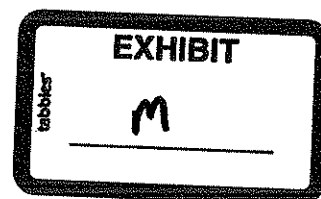
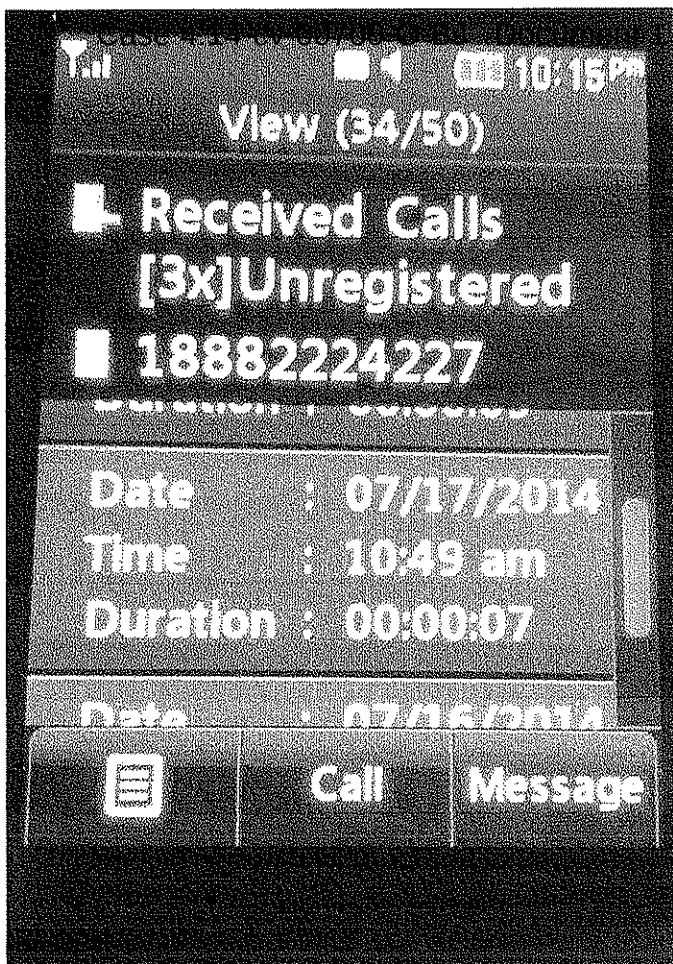


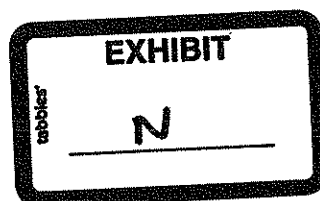


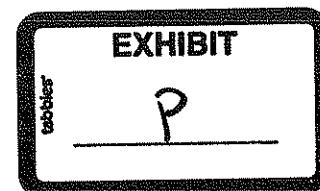
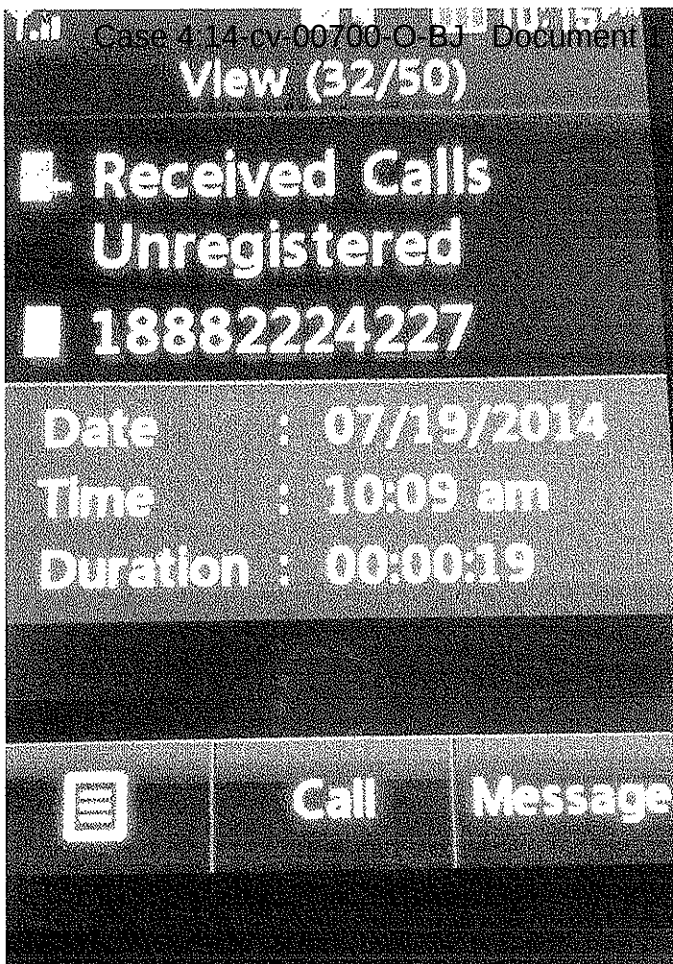












The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Andrew Gonzalez

2014 AUG 26 PM 12:52

(b) County of Residence of First Listed Plaintiff Tarrant

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Santander Consumer USA, Inc.

County of Residence of First Listed Defendant Dallas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Violations of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/25/2014

FOR OFFICE USE ONLY

RECEIPT # 022522

AMOUNT

\$400.

APPLYING IFP

JUDGE

MAG. JUDGE